

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD STURGIS,

Petitioner,

Case No. 16-12957

v.

HON. AVERN COHN

OAKLAND COUNTY CIRCUIT JUDGE,

Defendant.

/

**ORDER DENYING MOTION TO INCLUDE NEWLY DISCOVERED EXTRINSIC
EVIDENCE (Doc. 12)**

I.

Plaintiff Donald Sturgis, proceeding pro se, filed a “Alternate Writ-Extraordinary Writ.” He named “Oakland County Circuit Judge” as defendant. As best as could be gleaned, plaintiff challenged the trial court’s refusal to grant him post-conviction relief on his state court convictions. The Court dismissed the petition without prejudice on the grounds that plaintiff was seeking relief under 28 U.S.C. § 2254 and could not use the All-Writs Act, 28 U.S.C. § 1651, to avoid the requirements under section 2254.

Before the Court is plaintiff’s motion styled “Motion to Introduce Newly Discovered Extrinsic Evidence ...” The Court construes the motion as a motion for reconsideration. For the reasons that follow, the motion is DENIED.

II.

In order to obtain reconsideration, plaintiff must show a palpable defect by which the Court and the parties have been misled and that a different disposition of the case

must result from a correction of the defect. See E.D. Mich. LR 7.1(h). A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. Witzke v. Hiller, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

Plaintiff has not satisfied this standard. In his motion, plaintiff seeks to introduce purported “newly discovered evidence” to support his claim. He does not appear to argue that the Court erred in dismissing the case. As the Court explained, plaintiff must seek relief under section 2254, not the All-Writs Act. Should plaintiff wish to pursue relief in federal court, he must file a petition under section 2254.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: September 26, 2016
Detroit, Michigan